Supreme Court, U. S.
FILED
AUG 5 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,
Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
ALAN N. GAMSE,
10 Light Street (17th Floor),
Baltimore, Maryland 21202,
Attorneys for Appellee.

August, 1975

The Daily Record Co., Baltimore, Md. 21202

TABLE OF CONTENTS

	PAGE
MOTION TO AFFIRM	1
STATEMENT	2
ARGUMENT	11
CONCLUSION	12

TABLE OF CITATIONS

Cases

Administrator, Motor Vehicles Administration v. Vogt, 267 Md. 660, 299 A.2d 1 (1973) 3, 10

Statutes

Annotated Code of Maryland (1957):

Article 66½—

§5-203 ..... 4, 8
§5-205 ..... 7, 8
§11-1002.2(a) 4
§11-1002.2(f)(1) 4
§11-1002.2(f)(1-4) 8
§11-1002.2(f)(5) 2-5, 8, 12

Laws of Maryland, 1974, ch. 465 ..... 3, 5-7, 9, 11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

Alexandria Scrap Corporation (hereinafter referred to as "Alexandria"), Appellee, moves that the judgment of the District Court be affirmed on the ground that the questions raised by the Appellants are so unsubstantial as not to warrant further argument.

STATEMENT

The Jurisdictional Statement is predicated upon misstatements of the issues presented below. Appellants argue: "Alexandria's complaint is really that its bounty receipts have not increased by as much as it would have liked"[1] and that "[i]f Alexandria believes that price supportive bounty payments are essential to its survival, its proper redress is not to be found with the Court, but rather with the legislature — and the appropriate legislature in this case is that sitting in Richmond, Virginia and not that body which deliberates in Annapolis, Maryland"[2]. Alexandria submits that a clarification of the record is required.

Alexandria is a Virginia-based scrap processor whose primary source of raw materials is automobile hulks, a very substantial portion of which are derived in interstate commerce from Maryland.[3] The scrap metal which is processed by Alexandria is then sold, either directly or through brokers, to primary metal mills, many of which are located in states other than Virginia, the situs of Alexandria's operations.[4] The company's business is, therefore, heavily dependent upon the uninterrupted flow of scrap in interstate commerce.

Put simply, these proceedings were brought by Alexandria, the Plaintiff below and Appellee herein, because of the impact of the amendment of Maryland Annotated Code (1957, 1970 Repl. Vol., 1974 Cum.

[1] Jurisdictional Statement, 19.

[2] Id at 28.

[3] Affidavit of Isadore Gittleson ¶5, which is in the record.

[4] Id at ¶2.

Supp.) art. 66½, Section 11-1002.2(f)(5)[5] by the enactment of Chapter 465, Laws of Maryland, 1974. In its original form, Section 11-1002.2(f)(5) was a part of a general statutory scheme which was enacted for the purpose of restoring the operation of the scrap cycle by expediting the removal and destruction of junked and abandoned vehicles.[6] Prior to the 1974 amendment, there was no distinction in this legislative scheme between scrap processors which were located within the State of Maryland and those outside of its boundaries; the only restriction upon participation in the bounty program by a scrap processor was the requirement that the processor submit to licensing by the Motor Vehicle Administration of the State of Maryland. Non-Maryland scrap processors were eligible to be licensed, however, and, once licensed, there was no distinction between in-state and out-of-state scrap processors in terms of eligibility or procedures for collecting bounty payments.

One of the major obstructions to the proper flow of wrecked or abandoned automobiles was the failure of the possessor of such vehicles to have the proper title documentation. The statutory scheme enacted by the Maryland legislature sought to cure this difficulty by providing that wreckers and scrap processors, including

[5] Hereinafter all references to Maryland Annotated Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) art. 66½ are cited only by section number.

[6] The legislative intent of this statutory scheme, as construed by the Court of Appeals of Maryland, was "to arrest the increasing accumulation of automobile hulks, and to promote their recycling" *Administrator, Motor Vehicles Administration v. Vogt,* 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

Alexandria, could lawfully acquire abandoned vehicles from (1) an owner possessing a valid certificate of title, (2) a police department via a police sale (Section 11-1002.2(a)), (3) anyone in possession of a valid police certificate of authority to sell a vehicle (Section 11-1002.2(f)(1)), (4) formal notification procedures following 30 days possession plus an additional 10 days waiting period (Section 5-203) and (5) virtually anyone without any documentation in the case of a motor vehicle eight (8) years of age or older which has no engine or is otherwise inoperable (Section 11-1002.2(f)(5)).[7] Obviously, the transfer of a motor vehicle documented by a certificate of title is quite simple and quick. Since few abandoned vehicles arrive at a scrap processors' plant with a reliable certificate of title, however, the other methods of transfer are clearly important. The two methods of transfer which are wholly dependent upon local police departments involve procedures which are necessarily very time consuming. Further, the form and notice requirements of Section 5-203 are cumbersome and are available only to licensed *wreckers* as distinguished from unlicensed vehicle *towers,* which constitute a major source of supply to processors such as Alexandria.

As a practical matter, Alexandria and all other licensed scrap processors utilized the last method, prescribed by Section 11.1002.2(f)(5), virtually to the exclusion of the other methods. This is because the class of vehicles defined by two provisions — vehicles which are eight (8) years of age or older which have no engine or are otherwise inoperable and for which there

[7] These procedures are discussed in detail in the Opinion of the District Court A.8a-13a.

are no certificates of title — account for most of the volume of vehicles acquired by scrap processors. As a matter of practice, scrap processors, including Alexandria, have required persons delivering vehicles pursuant to this procedure to execute a form of indemnity agreement by which the transferror certified that he had legal ownership of and authority to deliver the vehicle, agreed to indemnify the scrap processor from all liability for claims arising from the destruction of the vehicle, and warranted compliance with all Maryland laws and regulations.

Chapter 465 of the Laws of Maryland, 1974, amended Section 11-1002.2(f)(5) so as to give formal legal effect to the use of indemnity agreements by scrap processors and, further, to limit the use of the Section 11.1002.2(f)(5) procedure to those scrap processors whose plants were physically located and operating in the State of Maryland.[8] The use of the indemnity

[8] The operative portion of Chapter 465 amended Section 11-1002.2 (f)(5) as follows:

> "Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is [[other]] OTHERWISE totally inoperable. IN THOSE CASES ONLY, A SCRAP PROCESSOR WHOSE PLANT IS PHYSICALLY LOCATED AND OPERATING IN THIS STATE SHALL [[MAY]] EXECUTE AN INDEMNITY AGREEMENT THAT SHALL BE FILED WITH THE MOTOR VEHICLE ADMINISTRATION. THE INDEMNITY AGREEMENT SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE

agreement to collect bounties for the destruction of insufficiently documented motor vehicles which were over eight years old and which had no engine or were otherwise totally inoperable was, by far, the simplest procedure for a wrecker or tower to transfer such a vehicle to a scrap processor and for the scrap processor, in turn, to claim the statutory bounty for the destruction of the vehicle. Thus the amendment effectively limited the ability of Alexandria and other out-of-state scrap processors to acquire bounty-eligible vehicles at a bounty-enhanced price to those few situations where the transferror had sufficient title documentation, was willing to undertake cumbersome and time consuming police procedures or, in the case of licensed wreckers only, was willing to go through the notice procedure to acquire title.

In their Jurisdictional Statement, the Appellants make clear that the Appellee had been affected by the application of Chapter 465 of the Laws of Maryland, 1974, in that the bounty payments received by Alexandria for the destruction of abandoned and wrecked

> OF THE PERSON DELIVERING THE VEHICLE. THE INDEMNITY AGREEMENT AND THE MANUFACTURERS SERIAL OR IDENTIFICATION NUMBER SHALL BE SATISFACTORY PROOF THAT THE VEHICLE HAS BEEN DESTROYED AND SHALL BE ACCEPTABLE FOR PAYMENT OF THE FULL BOUNTY AUTHORIZED BY SECTION 5-205 IF THE VEHICLE IDENTIFIED IN THE INDEMNITY AGREEMENT WAS TITLED IN THIS STATE. OTHERWISE FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SECTION 5-203 SHALL NOT APPLY".

The official explanation of type style from the Laws of Maryland, 1974, provides:

> "CAPTIALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates amendments to the bill. [[Double brackets]] enclose matter stricken out of bill."

motor vehicles accompanied by indemnity agreements have been greatly reduced since the effective date of the amendments. While this effect of Chapter 465 is most evident on the surface, the other effects of the amandatory legislation run considerably deeper. Put simply, Chapter 465 sets up a scheme of economic discrimination whereby a scrap processor, whose plant is physically located and operating in Maryland, can pay more than a non-Maryland scrap processor for the hulk of a motor vehicle which is greater than eight years old, has no engine or is otherwise totally inoperable and was once titled in the State of Maryland. This difference in worth is solely the result of the artificially enhanced value placed upon such hulks by the Maryland bounty program. Not only does the licensed wrecker receive a statutory share of the bounty from the Maryland scrap processor, but the scrap processor can sweeten the price paid to wreckers and non-licensed towers by paying them a part of the processors share of the bounty for eligible vehicles.[9]

So long as there was no discrimination in the operation of the program between Maryland scrap processors and non-Maryland scrap processors, the existence of the bounty was, in fact, a major device to accomplish the primary purpose of the program (to speed the scrap cycle), a boon to the entire scrap processing industry as well as to wreckers and towers. Common business sense dictates, however, that a wrecker or tower will attempt to dispose of a bounty-

[9] Section 5-205 guarantees that a wrecker is absolutely entitled to $8.00 of the bounty. However, Chapter 465 renders Section 5-205 inapplicable to 8-year old hulks delivered to out-of-state scrap processors without any title documentation except an indemnity agreement. Since in-state processors will have the use of the indemnity agreement procedure but out-of-state processors will not, it is obvious that the wrecker is deterred from moving the hulks in interstate commerce because he thus forfeits his $8.00 share of the bounty.

eligible hulk by the simplest available procedure. Thus, a wrecker or tower will never exercise the more cumbersome and lengthy technique of applying for police certificates pursuant to Section 11-1002.2(f)(1)-(4) or wrecker's certificates pursuant to Section 5-203 where an indemnity agreement can be used.[10] As a result in those cases where no title documentation is available, wreckers and towers will logically deal with Maryland scrap processors who will accept indemnity agreements pursuant to Section 11-1002.2(f)(5) and will pay bounty-enhanced prices for hulks eligible therefor. Conversely, the Appellee, as a scrap processor with a plant located outside of the State of Maryland, not being allowed to use the indemnity agreement technique to obtain the Section 5-205 bounty, cannot compete with the Maryland scrap processors because of the inability to pay to wreckers and towers a bounty-enhanced price for such hulks.[11] Thus, the supply of hulks in interstate

[10] The police certificate method of transferring title of an eight year old or older, totally inoperable vehicle to a scrap processor was seldom used and never really considered as an alternative to the indemnity agreement prior to July 1, 1974, when the provisions of Section 11-1002.2(f)(5) were uniformly available to customers of *all* scrap processors, irrespective of location. Stipulation ¶16, which is in the record.

[11] During the three months immediately prior to July 1, 1974 (April, May and June, 1974), the effective date of the amendment, Plaintiff acquired a total of *1,879* vehicles from an aggregate of eight unlicensed Maryland vehicles towers who were paid a bounty-enhanced price for the hulks. The Motor Vehicle Administration paid Plaintiff $30,064.00 in bounties for the destruction of those vehicles most of which was rebated to the towers who submitted the vehicles. During the next three months (July, August and September, 1974), the Plaintiff acquired a total of *27* vehicles from those same eight towers and collected a bounty of $432.00, most of which was rebated to the towers who submitted the vehicles.

Futher, a single tower in that group who delivered *691* of the bounty-eligible vehicles in interstate commerce from

commerce will dry up inasmuch as such commerce is diverted to in-state processors able to pay top dollar and to consummate the transaction expeditiously.

As a practical matter, of course, while the bounty payments provide an incentive to the scrap processor, their primary value is to allow the scrap processor to pay more for the bounty-eligible vehicles which it receives from both licensed wreckers and unlicensed towers.[12] If an out-of-state scrap processor, such as Alexandria, cannot claim a bounty on otherwise eligible vehicles because they are documented only through indemnity agreements, then the wreckers or towers will prefer, as a matter of basic business judgment, to deliver the hulk to a Maryland located scrap processor who will be able to pay the full bounty-enhanced price. Thus the wreckers and towers who are discouraged from delivering to out-of-state processors are also affected by the burden on interstate commerce imposed by Chapter 465.

The situation becomes clearly intolerable when the necessity for supplying the very expensive scrap processing machinery is considered.[13] A principal difficulty faced by any scrap processor is the maintaining of a steady stream of automobile hulks to feed the

Maryland during the two month period prior to the effective date of the amendment, has delivered *none* to the Plaintiff since that date. This tower has instead dealt on an intrastate basis with Joseph Smith & Sons, Inc., a Maryland-based competitor for automobile hulks in the Prince George's-Montgomery County area. Affidavit of Isadore Gittleson ¶13-14.

[12] See, Stipulation ¶10 and Affidavit of Isadore Gittleson ¶10.

[13] The equipment, which is required by both industrial necessity and statutory regulation, must be permanently installed and often costs in excess of one million dollars. See, Stipulation ¶10.

voracious appetite of the processing equipment, and it is only from this steady stream of hulks that the scrap processor can maintain his profitability. Thus, the effect of the Maryland bounty scheme is to alter the normal flow of bounty-eligible vehicles so as to ensure that those hulks documented by indemnity agreements only will be destroyed by scrap processors with Maryland locations. In this situation, the scrap processor relies upon the steady flow of hulks, rather than the bounty, and the discriminatory interference with interstate commerce in such hulks is manifest.

In their Jurisdictional Statement, the Appellants have unfortunately attempted to augment and overstate their case through several arguments which are completely irrelevant to the merits of these proceedings. For instance, Appellants have described several situations where the State of Maryland has no regulatory control over the operations of our-of-state wreckers. The distinctions and differences between wreckers and scrap processors have been quite adequately discussed and highlighted by the Maryland Court of Appeals in *Administrator, Motor Vehicle Administration v. Vogt, supra,* where the difference in operation and business philosophy of two related but very different businesses are made manifestly clear. While the Jurisdictional Statement does refer to the inability of the State of Maryland to regulate the activities of out-of-state *wreckers,* there is no foundation whatsoever laid to support any such intimation as respects the inability of Maryland to properly regulate Alexandria or any other out-of-state *scrap processor.*

Appellants also suggest that the Virginia legislature is the proper source of relief for Alexandria. This allegation is nonsensical. The State of Virginia has no reason to pay a bounty for the destruction of motor

vehicles previously titled in the State of Maryland. Indeed, if Virginia were to enact legislation equivalent to Maryland's bounty program, the bounty for destroying motor vehicle hulks would be limited to those motor vehicles which were once titled in the State of Virginia, and Alexandria would still be precluded from its source of supply of vehicles formerly titled in Maryland.

The Appellants further take the position that the provisions of Chapter 465 of the Laws of Maryland, 1974, were enacted to allow the State of Maryland to control its limited financial resources. Alexandria submits that, if conservation of money is the objective, the proper mechanism would be to lessen the amount of the bounty paid to *all* scrap processors for the destruction of bounty-eligible vehicles or, as suggested by the lower court, to limit bounty payments to vehicles abandoned within the State of Maryland. Opinion of the District Court, A 30a-31a. These alternatives would enable both Maryland scrap processors and those located elsewhere to compete on equal footing for the bounty-eligible vehicles and will ensure the continued flow of interstate movement of bounty-eligible vehicles without discriminatory impediment.

ARGUMENT

Alexandria submits that the three judge District Court fairly and faithfully applied the Constitutional principles established by the numerous precedents of this Court. The District Court's opinion reveals that the questions sought to be raised by the Appellants in the Jurisdictional Statement are unsubstantial. The District Court was correct in its assessment based upon its careful scrutiny of the record and briefs that there was no material fact in dispute. Appellants' attempt to interject irrelevancies into these proceedings cannot

justify the basic unconstitutionality of that portion of Chapter 465 of the Laws of Maryland, 1974, which limits the application of important aspects of the bounty program to scrap processors whose plants are physically located and operating in the State of Maryland.

CONCLUSION

The opinion of the District Court demonstrates that the 1974 amendment to Section 11-1002.2(f)(5) is devoid of any rational connection with the legislative purpose underlying the original enactment and that the Section, as presently enacted, is invalid in that it denies equal protection of the laws and constitutes an undue burden on interstate commerce. Alexandria submits that the issues raised by the Appellants in their Jurisdictional Statement are frivolous and so unsubstantial as to merit no further consideration. This Court should therefore affirm the decision of the District Court without the necessity for further argument.

Respectfully submitted,

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
ALAN N. GAMSE,
10 Light Street (17th Floor),
Baltimore, Maryland 21202,
Attorneys for Appellee.

August, 1975